

GARDNER, CARTON & DOUGLAS

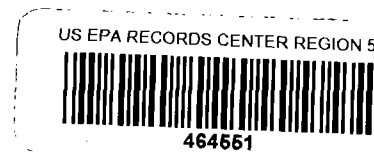
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WASHINGTON, D.C.

January 24, 1994

VIA MESSENGER DELIVERY

Mr. Steven M. Siegel
United States Environmental Protection Agency
77 West Jackson Boulevard
Chicago, Illinois 60604-3590



Re: American Chemical Services Site

Dear Mr. Siegel:

Enclosed please find a memorandum that briefly summarizes the Ad Hoc De Minimis Group Steering Committee's basis for acceptance or denial of challenges to individual companies' waste allocations for the above-referenced site. Most of the adjustments to volume that resulted from these challenges were reflected on the waste profile printout the Group provided to you with its proposal on December 28, 1993. However, minor additional adjustments were made after several errors were brought to our attention regarding several of the challenges submitted. These changes will be reflected in a revised printout that we will provide to you at the meeting scheduled for January 25, 1994.

In addition, many of the companies listed on the December 28, 1993 printout have paid their fair share of the RI/FS costs, but credit for those payments was not reflected on the printout. As soon as further information regarding RI/FS payments is provided to us by the companies that paid their share of the RI/FS costs, we will provide it to you.

The information provided in this memorandum is provided for purposes of settlement discussion only. In many cases, the adjustments made as a result of these challenges involved compromises made in the interest of achieving consensus for potential settlement. Nothing in this memorandum should be construed as an admission of liability on the part of any company identified in the memorandum, nor a commitment to execute a settlement agreement unless that individual company determines that an ultimate settlement is acceptable. By compiling this memorandum and submitting it to U.S. EPA, neither Gardner, Carton & Douglas, nor counsel for any of the other members of the Ad Hoc De Minimis Group, assumes or intends to assume representation of the Group or any of its members, other than their individual clients.

Mr. Steven Siegel
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If you have any questions regarding this memorandum, please contact Roberta M. Saielli at (312) 245-8769 or any other member of the Ad Hoc De Minimis Group Steering Committee.

Very truly yours,

ACS AD HOC DE MINIMIS GROUP STEERING COMMITTEE

Ad Hoc De Minimis PRP Group

Allocation Challenges

The Ad Hoc De Minimis PRP Group (the "Group") has developed an allocation waste profile which identifies the quantity of material attributable to each "arranger" PRP at the American Chemical Service ("ACS") superfund site. Group members were provided an opportunity to challenge their allocation in the waste profile. Challenges were considered by the Steering Committee on December 7 and 9, 1993. In addition, additional challenges were submitted following the Committee meeting and were circulated to the Steering Committee for consideration. The following is a summary of the challenges which were accepted by the Group.

Adheron

Adheron challenged June 28, 1974 and August 2, 1974 entries on the list of dates representing material sent to the site by Adheron during the period of 1955 through 1975, claiming that these entries were duplicate of a May 31, 1974 entry. Clean Site, Inc., had determined that the entries were duplicate. The two duplicate transactions were removed from the database.

Alumax

The company provided shipping documents, receiving documents, bills of lading, accounts receivable notices and cancelled checks from which every transaction between the company and ACS could be reconstructed. These documents showed which transactions were purchases of product and which were deliveries of material for reclamation or incineration. Purchase volumes were deleted from the company's volume.

Andrew Corporation

Andrew Corporation challenged an entry that it maintained was a duplicate manifest. 24,000 gross pounds were removed from the database for the pre-1980 time period.

Bennett Industries

The company made three challenges to its allocation which were accepted by the Group. First, Bennett maintained that the correct entry in the ACS transaction log for February 13, 1970 was 2,268 pounds. The transcription and database were corrected. Second, a mistake existed

concerning an April 9, 1970 entry in the ACS transaction log. An adjustment was made to the entry.

Third, the total number of gallons it sent to the site after 1980, as reflected in manifests, showed that the number should be 52,525 gallons which, multiplied by 8 to convert to pounds, results in 420,200 gross pounds rather than the higher amount in the waste profile.

C.P. Hall

C.P. Hall made two challenges to the waste profile. First, C.P. Hall had one transaction with ACS involving a supply of raw, or tooled materials to ACS in the amount of 27,560 pounds of heavy oxo ends. ACS then combined this material with another material in one of the processes conducted at the site, and produced 39,600 pounds of a final product, ethylene glycol, a plasticizer. The final product was then returned to C.P. Hall. The Committee decided that the 39,600 pounds of material would be included C.P. Hall's data and treated as a new entry for the 1955 through 1975 time period, and treated as material which was incinerated at the site.

Second, there were five transactions for which the company had no documents indicating shipments of materials to the ACS site. C.P. Hall's normal practice is to maintain such records. C.P. Hall has records concerning disposition of materials for the pertinent time period. C.P. Hall maintained that all transactions for this period involved the purchase of materials from ACS, and did not involve sending materials to ACS for reclamation. The five transactions were deleted from the database.

Chase

Chase made two challenges to the waste profile which were accepted. First, it has no check register entries reflecting payments to ACS for June 24, 1973 and February 28, 1974. Based upon Chase's documentation, these entries were deleted.

Second, for the period from 1981 through 1982, Chase maintained that the material it sent to ACS weighed less than 8 pounds per gallon. The challenge was accepted for any transaction for which Chase has documents demonstrating that the 8 pounds per gallon assumption was inappropriate. For transactions for which Chase has no documentation, the 8 pounds per gallon will be utilized. Acceptance of this challenge was conditioned upon Chase presenting the appropriate supporting documentation.

Chicago Finished Metals, Inc.

Chicago Finished Metals, Inc. challenged its volumetric allocation based upon the actual fees charged to Chicago Finished Metals for reclamation services. The formula default is \$.20 per pound for reclamation services, and Chicago Finished Metals provided documentation

demonstrating that it was charged \$.12 per pound for reclamation. Chicago Metals, Inc.'s reduced volume was recalculated.

Durabond

In 1987, ACS submitted to EPA the results of its analysis concerning companies that only purchased materials from ACS and did not send materials to ACS. Durabond was not on the "exception" list. In a separate letter, ACS told Durabond that it should have been included as a "purchase only" company. Durabond's allocation was deleted.

G.D. Searle

G.D. Searle requested that amounts attributed to it be split between G.D. Searle and NutraSweet, a different company since 1985. 4.6 million pounds of material were deleted from the G.D. Searle account and transferred to NutraSweet as post-1980 volume.

G.J. Nikolas

G.J. Nikolas has bills of lading, purchase orders and invoices for the period from February 1960 through May 1977. The company successfully demonstrated that a February 1960 transaction was a purchase. Based upon the company records, the purchase was deleted from the database. The volume attributed to the company from applying the default pricing formula to transactions in the ACS Transaction Logs was recalculated using actual pricing based upon the company's contemporaneous records showing it paid a higher price per gallon for each transaction with ACS.

Hydrosol

Hydrosol's records reflect that it was a purchaser of solvents from ACS and that these materials were used in its production processes. Hydrosol submitted supporting affidavits from persons who were with the company during the time period in which it used the ACS facility. For the period 1962 to 1963, Hydrosol's records demonstrated that it purchased reclaimed solvents from ACS. Hydrosol also demonstrated that duplicate entries existed for the 1972 to 1973 period. The duplicate entries and purchases were deleted from the database.

IVC Industrial Coatings

IVC Industrial Coatings made three challenges to the waste profile. First, the waste profile indicated that the company had two transactions for July 28, 1978 for \$1,227.50.

Accounting records show that there was only one entry for this date. The second entry was deleted.

Second, IVC argued that the July 28, 1978 entry is the same as entries for December 29, 1978; June 1, 1978; and October 26, 1978. The company argued that the documents indicate that the entry for the previous month for each transaction was carried over three times until paid, and that the carry-over entries do not reflect independent transactions. The Committee accepted the challenge.

Third, contemporaneous invoices demonstrate that the company paid \$.45 and \$.50 per gallon for transactions with ACS, rather than the assumed rate of \$.20 per gallon. The company's volumes were recalculated accordingly.

Jayar Hoag

Jayar Hoag made one successful challenge to the waste profile. The company could document six shipments involving a total of 44,969 pounds between 1967 and 1969 as ultra-sonic cleaner that it transported for another company, apparently Mark Control. The challenge to the waste allocation was accepted only to the extent that the company requested that gallons which Mark Control accepted as arranging for disposal were transferred to, and accepted by, Mark Control.

Knowles Electronics

The company maintained that for the period from 1955 through 1975 there is an amount totalling 729,175 gross pounds sent to the site on July 27, 1973 that is not and cannot be consistent with the company's activities during that time period in its records. The company made a presentation, including documentation, showing that the July 27, 1973 entry in the data base was not consistent with the company's activities. Due to the limited information supplied, 729,170 pounds figure was reduced to 72,917 pounds.

Also, Knowles' records showed that six transactions during the 1973 to 1974 period represented purchases. The six transactions were deleted.

Mallinckrodt

The company reported a mathematical error in its calculations and the correction was made using Clean Site's numbers.

Mark Controls

Mark Controls reported that its transporter for materials sent to the ACS site was Jayar Hoag. On six occasions, it sent a total of 44,969 pounds of an ultra-sonic cleanser during the

period from 1967 to 1969. The company stated that it would assume responsibility for this amount so that it had a quantity of material designated to it in the allocation profile.

Martin-Marietta

The volumetric allocations for Martin-Marietta and Mobil were revised in accord with the request by Martin-Marietta to divide volume so that all Martin-Marietta waste-to-the-Site prior to July 1, 1963 was attributed to Martin-Marietta, and all Martin-Marietta waste-to-the-Site after July 1, 1963 was attributed to Mobil, pursuant to the sales agreement between those parties.

Midwest Sintered Products

Midwest Sintered Products made three challenges to the waste profile which were accepted. First, the company maintained that its data involved a duplicate entry. It pointed out that, after comparing the transaction log and the Clean Site's data, one can see that for the May 5, 1972 entry there are two different costs in the transaction log associated with different transactions. This indicates that one type of transaction involved the purchase of a product and not delivery to ACS of material. The subject entry will be treated as a purchase. Second, the company documented six duplicate entries, and the entries were deleted.

Third, transactions on December 30, 1976, transactions in 1977, transactions in 1978 (through August), and the February, 1979 transaction, are transactions for which the company has documents demonstrating the number of gallons obtained from ACS. Midwest Sintered Products' allocation was adjusted accordingly.

Miles Laboratories

Miles submitted a challenge based on shipping and financial records relating to its business with ACS. These records reflect the costs Miles was charged per gallon for reclamation which was far in excess of the per gallon charge used as the default for the database. Under the allocation formula, a higher per gallon charge would result in a lower overall volume, since the transaction amounts listed on the ACS Transaction Logs were divided by the per gallon charge to determine the total gallons shipped to the site. Miles' had records for each transaction, which showed that it was charged as much as \$0.59 per gallon. Miles' challenge was accepted and its volume was recalculated and reduced based on the actual price per gallon figures contained in the contemporaneous records.

Mills Electric Company

Mills Electric received a letter from EPA identifying as a PRP, but the company does not appear in the de minimis PRP allocation. Mills Electric Company will be added, based upon

information it provided to the Group concerning one transaction from the accounts receivable ledger.

Mr. Frank

Mr. Frank was not an "arranger" but a "transporter" of materials to the Site. Mr. Frank provided information demonstrating the companies for which it transported materials, and its volume was deleted from the database accordingly.

Naz-Dar

Naz-Dar made three challenges to the waste profile which were accepted. First, a November 14, 1980 shipment received by ACS on November 18, 1980 occurred after the November 1, 1980 cut-off for post-1980 transactions. Even with this additional post-1980 transaction, Naz-Dar's post-1980 total should be increased due to additional manifests Naz-Dar located.

Second, a December 14, 1984 transaction was incorrectly determined to be gallons rather than pounds. The transaction manifest has the number 9,240 as the total volume for the transaction. That is consistent with Naz-Dar's historical pounds-to-the-Site transactions, and the entry of 73,920 pounds (based upon 9,240 gallons X 8 pounds) was reduced to 9,240 pounds.

Third, one transaction had both an Illinois and Metropolitan Sanitary District manifest for the same transaction, resulting in a double counting. The 8,170 pounds on the Illinois manifest was accepted on the assumption that the material had been weighed.

Packaging Ink

Packaging Ink's challenge involved incorrect applications of the reduced waste formula. Transactions were incorrectly added and characterized as reclamation volume when they should have been incineration volume. Packaging Ink supplied documentation which demonstrated the appropriate volumes for reclamation and incineration waste, and its reduced volumes were recalculated.

Pfanstiehl Laboratories, Inc.

Pfanstiehl made three challenges to the waste profile, which were accepted. First, its manifests showed that its materials weighed no more than 7 pounds per gallon, and sometimes weighed less. Manifests are available to show this and the challenge was accepted, contingent upon Pfanstiehl submitting all manifests to the group or, in the alternative, submitting an

affidavit explaining the information in the documents. Pfanstiehl submitted an affidavit, and the challenge was accepted. Second, an identical challenge was submitted and accepted for transactions involving February, April, and May, 1980 transactions. Third, Pfanstiehl identified a mistake in the database. A correction was made to delete a double-counting error. Pfanstiehl had no transactions with ACS prior to February 1980 and is only included in the pre-1980 database because the cut off date for the pre-1980 database was set at November 11, 1980.

Roy Strom

Roy Strom demonstrated that Clean Sites had agreed to correct a transcription error, but failed to carry the correction forward in its final documents. For the 1955 through 1975 period adjustments were made to the gross incinerated pounds and the gross reduced pounds-to-the-Site for Roy Strom.

Service Coating

Service Coating made three challenges to the waste profile which were accepted. First, an August 2, 1974 transaction involving 148,000 gross pounds was a purchase, and did not involve the company sending materials to the Site. Service Coating provided an affidavit to the Committee which demonstrated that the amount was not consistent with the amount of dirty solvents generated each month during that period, and that the company had ten 2,000 gallon tanks that were filled at that time. Second, Service Coating's volume should be reduced based upon a credit it received for the disposal charge on July 24, 1972. Third, Service Coating demonstrated certain double-counting in their database, and the database was adjusted accordingly.

Technical Petroleum

Technical Petroleum was attributed volume for materials which appeared on the "exception list" produced by Clean Sites. The exception list includes products which were only purchased from ACS. The Technical Petroleum products were simply listed under a different brand name than that which appeared on the exception list. The waste profile was adjusted accordingly.

Union Carbide

Union Carbide demonstrated that the formula was incorrectly applied to its volumes of incinerated and reclaimed materials.

V.J. Dolan

Dolan submitted one challenge to the waste profile which was accepted. First, Dolan purchased large amounts of lacquer thinner. Its sales records showed amounts of thinner sold, and that Dolan only repackaged and resold thinner. Based upon the sales records, Dolan's gross reclaimed pounds were reduced by 426,320 pounds, to 581,836 pounds.

Wrigley

Wrigley challenged one transaction in its database as a duplicate transaction. Documents submitted demonstrate that the entry was a duplicate, and the database was adjusted.